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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 412 (AT)

5 TIMOTHY SHEA,

6 Defendant.

Trial

7 -----x

8 May 26, 2022
9 9:00 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 District Judge
13 and a Jury

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: ALISON G. MOE

NICOLAS T. ROOS

18 ROBERT B. SOBELMAN

Assistant United States Attorneys

19 MERINGOLO & ASSOCIATES P.C.

20 Attorneys for Defendant

21 BY: JOHN C. MERINGOLO

ANGELICA B. CAPPELLINO

22 CLARA S. KALHOUS

23 Also Present: Sunny Drescher, Paralegal Specialist, USAO

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(Trial resumed; jury not present)

THE COURT: Good morning.

MR. ROOS: Good morning, your Honor.

THE COURT: Please make your appearances.

MR. ROOS: Good morning, your Honor. Nick Roos, Alison Moe, and Robert Sobelman for the government. We're joined at counsel table by Sunny Drescher, a paralegal in our office.

MR. MERINGOLO: John Meringolo, Angelica Cappellino, and Clara Kalhous for Mr. Shea who is standing to my right.

THE COURT: I understand you're ready now?

MR. ROOS: I think that's mostly right. We're set I think on all the stipulations except there's five -- correct me if I'm wrong -- five defense e-mails that we'll stip to the authenticity, but we think are hearsay, inadmissible hearsay, irrelevant, or more confusing than they are probative. So we object to those. We've otherwise stipulated to everything else I think at issue.

So I think Mr. Meringolo wanted to tee it up for your Honor, get a ruling on the admissibility of those, and we'll include them in the stipulation or not.

THE COURT: Those in the gallery may be seated.

MR. MERINGOLO: Your Honor --

THE COURT: Anyone who isn't speaking may be seated.

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1 MR. MERINGOLO: Your Honor, we agreed to these
2 yesterday. I went to bed, I didn't see the e-mail chain last
3 night. We came in this morning, there are five -- six e-mails.
4 I'm going over them with my team. I guess we can make
5 arguments on admissibility. I believe the government is right
6 on some of them, and they are.

7 But Judge, we have these decisions done last night
8 that we agreed in good faith to stipulate to them, and then we,
9 I come in -- Clara was doing it last night, and I come in the
10 morning and now we're not stipulating to them.

11 There is nothing you can do. This is just me talking.
12 I understand. But sometimes you say something, you do it in
13 life. Like I said, if I opened the door, I opened the door.

14 So, I can go through, I can give these to you, your
15 Honor, to make a ruling. If they're admissible or not. And I
16 guess it is not that much, Judge. And I don't mean to put you
17 through this, to make you work something that I think is
18 unnecessary.

19 THE COURT: That's what I get paid for.

20 MR. MERINGOLO: I understand, Judge. But we can do
21 the government's case, maybe release the jury, do the 29, make
22 a ruling here, and then I can go through it, 15, 20 minutes
23 tops.

24 THE COURT: Okay. I'd like just to get information
25 concerning which particular e-mails are at issue so that I can

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1 have my staff look at them while we are hearing from the
2 prosecution.

3 MR. ROOS: I believe it's Defense Exhibits --

4 MR. MERINGOLO: I have give the exhibit numbers, your
5 Honor. It's 615, 707, those are my lucky numbers, 705, 717,
6 and 713, sorry, 753.

7 THE COURT: After 717 what was it?

8 MR. MERINGOLO: I went back to 713, I'm sorry. 717,
9 753.

10 THE COURT: So the prosecution argues that these are
11 all hearsay?

12 MR. ROOS: Your Honor, yes. The first answer is yes
13 to your Honor's question. 717, I don't see in the defense
14 stip --

15 MR. MERINGOLO: Clara pulled it out, I'm sorry.

16 MR. ROOS: Just to clarify for the record, the defense
17 stipulation lists maybe, I don't know, 15 documents. Our
18 objections are to 615, 705, 707, 713, and 753.

19 Our view, in our view they are inadmissible hearsay.
20 The defense told us they are being offered to show they were
21 doing work at the time, which seems to us to being offered for
22 their truth. Like, here is evidence we are doing work is in
23 fact a statement for its truth.

24 And our view also there is no contest that people were
25 doing work towards We Build the Wall. So these e-mails, which

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1 your Honor will see are very difficult to follow and confusing,
2 have a pretty minimal probative value in the case, and will be
3 confusing and lack context for the jury.

4 Those are our objections to those five documents.

5 THE COURT: Mr. Meringolo, do you want to use these
6 e-mails to show that the defendant was actually doing work?

7 MR. MERINGOLO: Partly I believe.

8 THE COURT: What else?

9 MR. MERINGOLO: Partly to impeach the government's
10 theory that it was just a shell company. What else? That's
11 it, Judge.

12 MR. ROOS: On the second point --

13 MR. MERINGOLO: If there is admissible evidence, if
14 you rule that we could, we'll redact whatever you want to.

15 THE COURT: The bottom line is you are introducing it
16 for the truth of the matter asserted.

17 MR. MERINGOLO: Let me just see.

18 MR. ROOS: I'll just add on the second point about
19 Ranch Property Management being a shell company, I don't think
20 there was anything about Ranch Property in there. Period. If
21 there is, maybe we can just focus the e-mail on that. I think
22 it is still offered for its truth either way.

23 MR. MERINGOLO: We're not offering for its truth.
24 We're just offering that in fact that work was actually done.

25 THE COURT: You're offering it to prove the fact that

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1 work was done. Okay. So that's offering it for its truth.

2 MR. MERINGOLO: Okay. Judge, if you can make a
3 ruling, we had an agreement and I come from a different world.
4 You know. Just a totally different world.

5 THE COURT: When I have a moment to review them, I
6 will do that, and make my ruling.

7 MR. ROOS: And maybe it's on me because there was a
8 lot going on and I wasn't in those conversations. I will note
9 the defense stipulation they want us to sign reserves the
10 government's objections under 401 and 403, so I am not sure
11 what this --

12 MR. MERINGOLO: We -- we had an agreement yesterday.
13 I don't care what it says. That's what we had an agreement
14 and, Judge, this is court. This isn't my neighborhood. This
15 is the court. I understand. I just thought we had an
16 agreement, you can put them all in, let's move on. And that's
17 what we did. It's okay, Judge. It's okay.

18 THE COURT: Anything else?

19 MR. ROOS: No, your Honor. We're happy to proceed.

20 THE COURT: So, I'll have the jury come in, you are
21 going to present certain stipulations; is that correct?

22 MR. ROOS: That's right, there's just two or three
23 exhibits that from our view the transcript is not clear were
24 actually -- we think are in, but I want to clear up the
25 transcript cites. And then I think I have four or five

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1 stipulations just to read in and offer the exhibits associated
2 with them and then we'll rest.

3 THE COURT: Okay. Then I will have the jurors go out,
4 and Mr. Meringolo, you'll make your motion. And I will make my
5 ruling on the e-mails. Then I'll have the jurors come back in,
6 and I will excuse them for the weekend.

7 MR. MERINGOLO: We're going to put our case, right?

8 THE COURT: You are going to be adding -- you are
9 going to be presenting something?

10 MR. MERINGOLO: I'm going to show them the e-mails and
11 read them the e-mails that's in evidence.

12 THE COURT: You are saying those e-mails that have
13 already been --

14 MR. MERINGOLO: We'd still have 10 e-mails and we have
15 a video which is two minutes, and one picture. I mean, Judge,
16 if you gave us 20 minutes, I'll have it all done.

17 THE COURT: You will get the amount of time that you
18 need.

19 MR. MERINGOLO: Okay.

20 THE COURT: Very well. Let's have the jurors come
21 back in.

22 (Jury present)

23 THE COURT: Do the parties agree that all jurors are
24 present and properly seated?

25 MR. MERINGOLO: Yes, your Honor.

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1 MR. ROOS: Yes, your Honor.

2 THE COURT: Please be seated.

3 Good morning, jurors. I apologize again for the
4 delay.

5 The prosecution may continue.

6 MR. ROOS: Thank you, your Honor.

7 First, your Honor, as a matter of housekeeping I
8 believe stipulations S1, S3, S5 and S6 were previously admitted
9 and exhibits were admitted from it. I just want that to be
10 reflected in the transcript so I will note that now.

11 THE COURT: They are admitted.

12 (Government's Exhibit S1, S3, S5, S6 received in
13 evidence)

14 MR. ROOS: Similarly Government Exhibit 452 was
15 admitted yesterday.

16 THE COURT: It's admitted.

17 (Government's Exhibit 452 received in evidence)

18 MR. ROOS: The government will now read a series of
19 stipulations if that's okay.

20 THE COURT: That's fine.

21 MR. ROOS: Ms. Drescher, can we please see Government
22 Exhibit S2. And I'll read it.

23 It is hereby stipulated and agreed by the United
24 States of America and Timothy Shea, the defendant, that
25 Government Exhibit 271 contains an accurate list of certain

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1 checks to We Build the Wall that were received at 4833 Front
2 Street, Unit B-158, Castle Rock, Colorado, and then provided to
3 American Caging Inc. a donation processing service for
4 processing and depositing into We Build the Wall's bank
5 account.

6 Then there is some information about how to read the
7 exhibit.

8 The government offers this stipulation and the cited
9 Exhibit 271.

10 MR. MERINGOLO: No objection.

11 THE COURT: They are admitted.

12 (Government's Exhibit S2, 271 received in evidence)

13 MR. ROOS: And Ms. Drescher, can we please now publish
14 for the jury Government Exhibit 271 which is the list of checks
15 that were deposited.

16 Your Honor, this, like the exhibit yesterday, contains
17 some personal information of donors so we ask that this
18 spreadsheet, Government Exhibit 271, be maintained under seal.

19 THE COURT: Yes. It shall be under seal.

20 MR. ROOS: Ms. Drescher, if you can scroll down
21 through the exhibit so everyone can see the number of names.
22 Thank you. We can take that down.

23 Ms. Drescher, can we please now have Exhibit S9, which
24 is another stipulation. And your Honor, government offers S9.

25 THE COURT: It is admitted.

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(Government's Exhibit S9 received in evidence)

MR. ROOS: Thank you, your Honor. Can we publish this to the jury.

THE COURT: You may.

MR. ROOS: And I'll read it.

It is hereby stipulated and agreed by the parties that on May 20, 2021, one payment of \$292 was made toward the interest accrued on the \$59,800 loan obtained from the Small Business Association on May 20, 2020, by Timothy Shea, the defendant, in connection with Ranch Property Marketing and Management LLC. No other payments have been made.

Second no moneys on the loan are yet due at this time.

Can we now see --

THE COURT: One moment. Counsel, if counsel would step up, please.

(At the sidebar)

THE COURT: There is a typo. It says Small Business Association it should be "administration." Does everybody agree that it is administration?

MR. MERINGOLO: Yes.

MR. ROOS: Yes.

THE COURT: You can correct it.

(In open court)

MR. ROOS: Your Honor, on S9, I'll just note it says Small Business Association I think that's a typo. It should

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1 say Small Business Administration. I think everyone agrees.

2 THE COURT: Everyone agrees it is a typo. It should
3 be "administration."

4 MR. ROOS: Ms. Drescher, can we now see Government
5 Exhibit S10. Which is a testimonial stipulation regarding Kris
6 Kobach.

7 Government offers Exhibit S10. Can we publish it for
8 the jury.

9 THE COURT: Go ahead. It is admitted.

10 (Government's Exhibit S10 received in evidence)

11 MR. ROOS: I'll read it.

12 If called to testify, Kris Kobach would testify as
13 follows.

14 1. Kris Kobach is a licensed attorney in good
15 standing with the bar of the state of Kansas. In late
16 January 2019, he became general counsel of We Build the Wall
17 and a member of its board of directors.

18 2. Defense Exhibit 508 is a video of Kris Kobach in
19 2019.

20 3. Kris Kobach recalls that at some point he was told
21 that Timothy Shea was involved in hiring a security company to
22 provide security services at a construction site for We Build
23 the Wall.

24 4. Kris Kobach was not informed of, and had no
25 knowledge of, payments from We Build the Wall to Brian Kolfage

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1 in 2019 for compensation or salary. Kobach was not informed
2 of, and had no knowledge of, payments from We Build the Wall to
3 Ranch Property Marketing and Management or to Winning Energy
4 LLC five. We Build the Wall never created an audit committee.

5 Thank you, Ms. Drescher. We can take that down.

6 Offer another stipulation and this one I think I'll
7 need to use the Elmo. This is just for the parties,
8 stipulation S12.

9 And the government offers stipulation S12.

10 THE COURT: It is admitted.

11 (Government's Exhibit S12 received in evidence)

12 MR. ROOS: May we publish it to the jury?

13 THE COURT: You may.

14 MR. ROOS: This stipulation says the parties agree
15 that:

16 1. Rich Kaye is a partner at the law firm of Barnes &
17 Thornburg LLP in Atlanta, Georgia. He is a licensed attorney
18 in good standing with the state bar. Mr. Kaye's law firm
19 e-mail address is RichKaye@BTlaw.com.

20 Second. In 2018 and 2019, Rich Kaye provided legal
21 services to We Build the Wall.

22 3. Government Exhibit 129 is an e-mail sent on
23 October 22, 2019, by Rich Kaye from his personal e-mail address
24 which is RichKayeesq@gmail.com to Amanda Shea at
25 ATSheamedia@gmail.com.

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1 Ms. Drescher, can we publish Government Exhibit 129
2 which is in evidence.

3 And Ms. Drescher, can we look at the attachment which
4 is Government Exhibit 129A.

5 Thank you, you can take this down. And if we can use
6 the Elmo again just for the parties.

7 Government offers Exhibit S11.

8 THE COURT: It is admitted.

9 (Government's Exhibit S11 received in evidence)

10 MR. ROOS: May we publish?

11 THE COURT: You may.

12 MR. ROOS: It is hereby stipulated and agreed by the
13 parties that on August 20, 2020, Timothy Shea, the defendant,
14 was arrested by federal law enforcement agents pursuant to a
15 court-issued warrant after a grand jury sitting in the Southern
16 District of New York filed the indictment that initiated this
17 criminal case.

18 We'll take this down. One moment, please.

19 And with that, your Honor, the government rests.

20 THE COURT: Members of the jury, the government has
21 rested and has finished presenting evidence. That does not
22 mean that the trial is over. We're going to take a brief
23 recess, and I will be calling you back into the courtroom.
24 Even though the government has rested, you cannot start
25 deliberating. You cannot start deliberating until I tell you

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1 that it's time to deliberate. So, don't discuss the case
2 amongst yourselves, don't let anybody discuss the case in your
3 presence. I will call you back in shortly.

4 (Jury excused)

5 THE COURT: Mr. Meringolo?

6 MR. MERINGOLO: Yes, Judge. I'd like to make a Rule
7 29 motion.

8 Judge, respectfully submitted, the government hasn't
9 proved Counts One through Three beyond a reasonable doubt.
10 We're requesting the Court to dismiss it because they haven't
11 proved each and every element of each and every crime. And we
12 ask the Court to dismiss the case.

13 In addition to that, if we could have 14 days for any
14 briefing on a Rule 29. We would ask the Court, if we choose to
15 do it in writing.

16 THE COURT: I'll hear from the government.

17 MR. ROOS: Your Honor, would you like to hear an oral
18 argument or a response?

19 THE COURT: Yes.

20 MR. ROOS: Yes, your Honor.

21 Count One of the indictment alleges that the defendant
22 conspired in a scheme to commit wire fraud by two ways. One,
23 defrauding donors of money or property through false
24 statements, representations or promises, and two, by defrauding
25 We Build the Wall, through defrauding We Build the Wall, Brian

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1 Kolfrage and others honest services by way of kickbacks. The
2 evidence established at trial establishes that the defendant
3 and his co-conspirators made false statements to the public by
4 stating, among other things, on multiple occasions, that one,
5 100 percent of the money would go to constructing a border
6 wall, and two, that the defendant as well as other individuals
7 associated with We Build the Wall would not take a penny in
8 compensation or salary.

9 Witnesses at this trial as well as e-mail evidence
10 establish these were important or weighty considerations for
11 people donating to We Build the Wall. And had they known that
12 was not the case, it would have been material to their
13 decision-making.

14 The evidence presented in the form of e-mails, text
15 messages, and financial documents establish that Brian Kolfrage
16 in fact was paid through a series of approximately 12 different
17 transactions whereby money was sent to an intermediary account
18 and then kicked back to Brian Kolfrage. And so that's Count One
19 on both objects.

20 Clearly the evidence establishes by way of text
21 messages and e-mails that there was a conspiracy amongst
22 multiple people to carry this out.

23 Count Two is the money laundering charge. There is
24 more than sufficient evidence to give this to the jury. First,
25 the evidence by way of Special Agent Yves Hunziker establishes

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1 through a series of charts that money was sent through
2 intermediary accounts. We heard the testimony of an expert
3 witness about the ways in which money laundering occurs, many
4 of the different ways he describes money laundering happens is
5 exactly what we see in these financial transactions here. Ways
6 to conceal, and also on the second object, over \$10,000 or more
7 in transactions involving crime proceeds. So that's Count Two.

8 And then on Count Three, which is obstruction by way
9 of falsification of records, the evidence established that the
10 defendant, after learning of a grand jury investigation in
11 October 10, 2019 -- one second.

12 The defendant, after learning of the grand jury
13 investigation in October of 2019, together with Brian Kolfage,
14 created a document that was backdated to March 2019. The
15 metadata presented yesterday establishes that document was
16 created after they learned of the grand jury investigation.

17 Throughout each of these different counts, there is
18 evidence that the defendant participated in the conspiracy.
19 He, among other things, participated in the organization and
20 creation of We Build the Wall, he participated in the money
21 movements, he is on the text messages discussing transfers of
22 payments.

23 So there is more than sufficient evidence to send this
24 to a jury.

25 THE COURT: All right. I'll permit the defense to

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1 submit a written motion. You have until June 9, so I will
2 reserve decision. If no motion is submitted, I will issue a
3 written decision on the docket.

4 Anything further?

5 MR. MERINGOLO: Nothing further from the defense,
6 Judge.

7 THE COURT: All righty. So I am going to review the
8 e-mails now and then I will come back with my decision. So
9 we'll take a recess.

10 (Recess)

11 (In open court; jury not present)

12 THE COURT: I have reviewed the e-mails, and I agree
13 with the defense that they do suggest that Mr. Shea undertook
14 work to Build the Wall. However, they amount to hearsay, and
15 so I'm not going to allow them to be admitted.

16 MR. MERINGOLO: Judge, just one thing. I'd like to
17 preserve my right under Rule 29 for venue. I didn't, that the
18 government didn't establish venue. So I'd like to preserve my
19 right to do that in the memo if we choose to.

20 THE COURT: All right.

21 MR. ROOS: I'm happy to speak to that or if they file
22 a Rule 29 we can just respond there.

23 THE COURT: Why don't you speak to it.

24 MR. ROOS: Certainly, your Honor. So, there was ample
25 evidence of venue. Among other things, there is records that

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1 donors donated from the Southern District of New York. They
2 used checks, they used GoFundMe in the Southern District of New
3 York. The co-conspirators of the defendant filed their
4 registration with New York to fundraise here. There is some
5 other evidence that will come out during the closing, but I
6 think that's more than enough to get us to the jury.

7 THE COURT: All right then. So I'll bring the jurors
8 back in. And Mr. Meringolo, you will present your evidence.

9 (Jury present)

10 THE COURT: The parties agree that all jurors are
11 present and properly seated?

12 MR. ROOS: Yes, your Honor.

13 MR. MERINGOLO: Yes, Judge.

14 THE COURT: Please be seated.

15 Members of the jury, we will now hear evidence
16 presented by the defense.

17 Mr. Meringolo.

18 MR. MERINGOLO: Yes, your Honor. Your Honor, I'd like
19 to read a stipulation.

20 THE COURT: Go ahead.

21 MR. MERINGOLO: It is hereby agreed and stipulated by
22 and between the United States of America and Timothy Shea, the
23 defendant, that Defense Exhibit 602, 613, 629, 627, 628, 728,
24 740, 763, 764 and 800, and their subparts, are authentic copies
25 of e-mails and their attachments produced by e-mail service

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1 providers pursuant to a court-authorized search warrant. The
2 "from", the "to," the "cc," the "bcc" fields accurately display
3 the e-mail addresses that sent or received the e-mails. The
4 "sent" field accurately displays the dates and the times on
5 which the e-mails were sent. Subpart exhibits were attachments
6 to the main e-mails, e-mail exhibits. For example, Defense
7 Exhibit 602 was attached to Defense Exhibit -- 602A was
8 attached to Defense Exhibit 602.

9 It is further stipulated and agreed that this
10 stipulation as well as the defense exhibits received subject to
11 any objections under rule 401 or 403 of the Federal Rules of
12 Evidence. Dated May 26, 2022, signed by the government and
13 myself.

14 THE COURT: It is admitted.

15 MR. MERINGOLO: Thank you judge.

16 (Defendant's Exhibit 602, 613, 627, 628, 728, 740,
17 763, 764, 800 & their subparts received in evidence)

18 MR. MERINGOLO: Judge, I would like to publish 728.

19 MR. SOBELMAN: I think defense counsel may have
20 misspoke at one point and offered Exhibit Number 629 which we
21 don't see on the stipulation.

22 MR. MERINGOLO: 629 I said, Judge?

23 THE COURT: I don't recall if you did.

24 MR. MERINGOLO: The letters and numbers jump for me so
25 I'm sorry. It's not 629. It is 628.

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1 Is that correct?

2 MR. SOBELMAN: Yes, that's what is on the stipulation.

3 MR. MERINGOLO: I'm going to try to match this up.

4 I'd like to put it on the Elmo if we can.

5 I'm going to put Exhibit Number 728 published to the
6 jury.

7 It is an e-mail from Timothy Shea,
8 TimShea.realestate@gmail.com. Unarmed security contract. On
9 March 13, 2019. This is a contract for six unarmed bouncers
10 for Cobo. Sign it and send it back to me.

11 This is 740. Timothy Shea to Andy Badolato 3/12/19.
12 Starting from -- Mr. Shea says sounds like three of the police
13 officers will be rolling in between 4:30 and 5:30 as they get
14 off duty. See e-mail below.

15 E-mail below. I have three Hamilton county deputies
16 phasing in as they get off duty from 4:30, 5, 5:30 p.m. I also
17 have Cincinnati police that will have two officers here plus a
18 captain that can call in more resources if needed.

19 And this is the back of the e-mail.

20 The next e-mail, your Honor, and ladies and gentlemen
21 of the jury, are 623 and 623A. 623 is from Timothy Shea to
22 Brian Kolfage, states: Thanks, Brian.

23 623A is a Ranch Property Management invoice and the
24 description states: Contract company to utilize commercial
25 drone service to gather footage over the southern border. The

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1 service provided drones using streaming 4K video both during
2 the day and night to gather intelligence on border crossings in
3 Sunland Park, New Mexico. Contractor is licensed to fly in
4 Mexico's airspace as well as the U.S.A. Five consecutive days
5 and fights, \$9,345 per day. Subtotal \$46,725.33.

6 The next exhibit is 627. This is from Timothy Shea to
7 Brian Kolfage on November 6, 2019.

8 Hi, Brian. Please look over my proposal, sign, send
9 back to me. Also, will include wire instructions U.S. Bank
10 Ranch Property, the numbers, Castle Rock, Colorado. Thanks,
11 Tim.

12 This is 627A, and this is a contract and the contract
13 at the end, the filming, you guys can read it the total of the
14 contract is \$57,756.

15 All right. The next e-mail is 628 and 628A. And it
16 is an e-mail, again, from Timothy Shea to Brian Kolfage on
17 December 13, 2019, at 10:42 a.m.

18 Hi, Brian. Here's the invoice, U.S. Bank Ranch
19 Property Marketing and Management. Castle, Colorado. RPMM.
20 And the invoice and it's 628A, and ladies and gentlemen, you
21 can look at it. just the total is \$20,856.

22 602. 602 is 602 and 602A. It is an e-mail from
23 Timothy Shea to Amanda Shea on January 22, 2020. And the
24 invoice is attached at 602A, and the invoice is for marketing
25 towards the new building locations in Mission, Texas, and Rio

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1 Grande Valley, Texas. Utilize Facebook ads, utilize Google
2 ads, pull info on local landowners' tract locations and cold
3 calls. Set up meeting. Total \$5,817.

4 Next exhibit is Defense Exhibit 800. And this
5 exhibit, Exhibit 800, is July 16, 2019, from Timothy Shea to
6 Brian Kolfage. And there is an attachment 800A. And here's
7 the invoice. Yikes. That's what Mr. Shea says.

8 And attached to the e-mail is 800A, it is an invoice
9 from Sky Front, creation date of the invoice is July 15, 2019.
10 It is prepared by a person by the name of Troy Metzler and the
11 contact is Timothy Shea. And the invoice is for \$64,500 for
12 premier MRS, medium range surveillance, perimeter surveillance,
13 electronic fuel injection, ground control station laptop and
14 software, laptop stand, two custom fit pelican transport cases,
15 battery charges, medium range telemetry and video. And then
16 the camera, the rental for the camera is 15,000 and tax is
17 5 percent. And the total of this invoice is \$84,475.

18 Okay. I'm done with this batch. We have just a few
19 more. Does anybody know how to work this?

20 At this time, your Honor, the government and I have
21 agreed that the defense could move a picture of the border wall
22 after completion. Defense Exhibit 302.

23 THE COURT: It is admitted.

24 (Defendant's Exhibit 302 received in evidence)

25 MR. MERINGOLO: I can't get it on the screen so I'll

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1 show ladies and gentlemen of the jury. This is Exhibit 302.

2 This is Exhibit 613. And it is Exhibit 613. And
3 613A. And it is Timothy Shea on March 29, 2019. Timothy Shea
4 to landowners. Subject landowners to Andy Badolato and Brian
5 Kolfage.

6 Hi, fellas. Read this over, let me know if any
7 changes need to be made. Thanks, Tim Shea, associate broker,
8 Realty One Premier Group. And the attachment is 613A, and it
9 states:

10 Dear landowner. We have been contracted by We Build
11 the Wall to identify privately owned property along the United
12 States-Mexico. The nonprofit group backed by some of the
13 biggest names in politics is excited to be currently working
14 with private landowners to build a barrier along the national
15 border wall. Additionally, We Build the Wall is protecting
16 individuals' property along the border wall at no cost to the
17 landowner. In some areas where the wall has already been
18 built, we have seen a dramatic increase in land due to the
19 protection of property. More importantly than the increase in
20 value is the owners have a new, needed sense of safety and
21 security. This is an exciting opportunity to be a part of
22 history in the making led by the first, and only, privately
23 funded effort to secure our nation's border. We Build the
24 Wall. Inc. Is fulfilling a decades old political promise made
25 to the American people and have been given Donald Trump's

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1 blessing. It would be our pleasure and honor to set up a phone
2 call or meeting with you and one of the We Build the Wall board
3 members, including the cause's founder, triple amputee war hero
4 Brian Kolfage to discuss the plans for building the wall and
5 how your property can be a very valuable part of that process.
6 We are also happy to answer any questions you may have about
7 this at this time. We have provided the website information
8 below so you can explore the group's cause, missions plans and
9 progress. Please feel free to contact us by phone to speak to
10 us personally.

11 Direct line. Ranch Property Management and Marketing
12 1-800-608 -- everybody knows the website. That's 613A.

13 763 -- we only have one more after this -- is an
14 e-mail from Jason Miller to Tim Shea. This is an e-mail from
15 Jason Miller, subject border wall, to Tim Shea.

16 Hi Andy, here is the contract for the security detail.
17 I'll call you in the morning.

18 Hi Tim, great talking with you tonight. Thanks for
19 clearing up a few things for me. I've attached the LOA. As
20 discussed, though, this is just a draft version. As you'll see
21 there are some blank spaces, namely if we move forward, I'll
22 need the physical address or the closest cross streets of the
23 site, billing addresses, your title, credit card or wire
24 transfer instructions for advance payment, and the local POC's
25 whom we'll meet with on Wednesday for coordination and

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1 Thursday. When work begins, I will make the final changes and
2 resubmit the document to you or whomever you designate via
3 docusign, which is easy to execute on your phone or any device.
4 Please try to have an answer for me by close of business
5 tomorrow so I have time to get our agents scheduled and get my
6 travel arrangements made. I understand this is a sizable
7 amount of money, but I hope we can make this work. Feel free
8 to call me.

9 The last exhibit is 764. And it is a proposal to Tim
10 Shea from Jason Miller. Oh this -- this is 764 but that's
11 related to the e-mail I just read to you. This is the proposal
12 that Tim was talking -- this is the border wall that We Build
13 the Wall built.

14 And your Honor, at this time, defense would like to
15 play a two-minute video.

16 THE COURT: You may.

17 MR. MERINGOLO: Thank you, Judge.

18 (Video playing)

19 MR. MERINGOLO: Judge, that was very unclear and the
20 sound, I think it will be in evidence, it will be much clearer.
21 If the jury wants to watch it.

22 THE COURT: Of course.

23 MR. MERINGOLO: All right.

24 Judge, the defense rests.

25 THE COURT: Members of the jury, the defense has

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1 rested and has finished presenting evidence, but that does not
2 mean that the trial is over. We still have summations, both
3 sides, as well as my instructions on the law. That will go
4 forward on next Tuesday. And so we have come to the end of our
5 work for today.

6 It's very important that you remember that I have not
7 yet told you that it's time to deliberate. We're about to
8 stop, and recess until next Tuesday at 9 a.m. And I want to
9 remind you of the instructions that I gave you earlier about
10 your conduct as jurors.

11 During this recess, and all other recesses, do not
12 discuss the case with anyone, including your fellow jurors,
13 other people involved in the trial, members of your family,
14 friends or anyone else. Do not speak at all with any of the
15 parties, the witnesses or the attorneys. Do not permit anyone
16 to discuss the case with you. Do not even remain in the
17 presence of anyone discussing the case. If anyone approaches
18 you, and tries to talk to you about the case, please report
19 that to me through my clerk immediately. Do not read, watch,
20 or listen to any news reporting concerning the trial in a
21 newspaper, on the internet, or television. Do not use the
22 internet or library or any other source to look for information
23 about the parties, the witnesses, the lawyers or anything else
24 associated with the case. Do not conduct any kind of
25 investigation on your own.

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1 The only information that you are to consider in
2 deciding the case is what you have learned in this courtroom
3 during the trial.

4 However, you are not ready yet to decide the case. As
5 we part today for this long weekend, I want to remind you that
6 you are being entrusted with a great responsibility in being
7 able to return home for a number of days. I'm sure that each
8 of you will make every effort to ensure that none of the
9 restrictions is violated.

10 You must return to the courtroom at 9 a.m. on this
11 coming Tuesday, May 31.

12 I hope all of you have a lovely holiday weekend.
13 Thank you.

14 (Jury excused)

15 THE COURT: Please be seated.

16 I did not receive any further comments with respect to
17 the instructions.

18 MR. SOBELMAN: Yes, your Honor. We are in the process
19 of drafting a letter that we hope to file today. There are not
20 any alterations to the instructions as your Honor drafted them.
21 It might be just two or three very discrete additions related
22 to events from the trial, but it is still something we are
23 working on and we hope to have that filed today.

24 THE COURT: Very well.

25 MR. SOBELMAN: Just one other minor issue to raise. I

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1 want to clarify for the record that the defense e-mails that
2 were offered were not offered for their truth. There is no
3 hearsay exception that would apply. To the extent they contain
4 any factual assertions, we would ask that the Court instruct
5 the defense they cannot argue the truth of the matters asserted
6 in those e-mails.

7 THE COURT: So, for what purpose, Mr. Meringolo, were
8 they admitted?

9 MR. MERINGOLO: They were admitted to refute the
10 government saying there were no legitimate invoices.

11 THE COURT: Is that the government's understanding?

12 MR. SOBELMAN: Not sure precisely the purpose that the
13 defense thought they were relevant. We tried not to object to
14 every single document they wished to offer. But, there were
15 some documents, for example, there was an e-mail that attached
16 an invoice. The invoice itself we have no objection to the
17 fact that it is an invoice. But, to the extent it states that
18 certain work was done, we don't think the defense can rely on
19 the truth that, okay, because there was an invoice, the work
20 was done. They can say there was an invoice, and this is what
21 the invoice asked for. But, we think that extra step would be
22 inappropriate, given the fact there is no hearsay exception.

23 So I want to clarify that they can reference the
24 documents, there were invoices sent, but they can't then say
25 the invoice is proof that the items listed in the invoice

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1 actually occurred.

2 MR. MERINGOLO: Well, if I said, your Honor, Timothy
3 Shea did work, without referencing -- I think we have evidence
4 in there that in fact he did do work. Did he send, he did send
5 the people a letter that he proposed to go get the property?
6 They got the property. You know, they had events, there was
7 security. I mean...

8 THE COURT: Why didn't the prosecution object to the
9 admission of the documents?

10 MR. SOBELMAN: Your Honor, because the documents, if
11 not offered for their truth, we think are admissible. We don't
12 think they're highly probative of anything.

13 To the extent the defense wants to argue there were
14 other invoices that Timothy Shea sent to Brian Kolfage or to We
15 Build the Wall, at other points, invoicing for other purported
16 work, I think they're entitled -- again, I don't find it
17 persuasive -- I think they are entitled to say, hey, there were
18 other financial transactions between these individuals that the
19 government didn't put before the jury.

20 But, the truth of those underlying events occurring,
21 in the same way that the government can't offer an invoice to
22 show that the underlying event actually occurred, absent a
23 hearsay objection.

24 THE COURT: I think we need to go through these
25 documents, because I want to understand what you've agreed to

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1 and what you haven't agreed to.

2 MR. SOBELMAN: That's fine. We can go through it. I
3 think whatever your Honor thinks is appropriate. I am not
4 asking for that. I simply wanted to make sure --

5 THE COURT: He has to understand what it is that he
6 can discuss in summation. My understanding was that you had
7 come to an agreement together with respect to the documents,
8 you did not make an objection. So, it is important that
9 Mr. Meringolo understand what he can say for his summation.

10 MR. SOBELMAN: That's fine, your Honor. Just to be
11 clear, Ms. Moe said in opening that the government concedes
12 Mr. Shea did work for We Build the Wall. So there is no, as
13 far as we see it, that's not the battleground in this case. We
14 are not going to say in closing or rebuttal that Mr. Shea did
15 no work for We Build the Wall.

16 So we see this as a little bit of a side issue. To
17 the extent the defense wants to rely on the truth of some of
18 the statements in these documents, I think we should talk about
19 whether that's appropriate. We didn't understand him to be
20 offering it for that purpose.

21 THE COURT: So, my impression was that the defense was
22 offering the documents as evidence of work that was
23 accomplished. I don't know of any other reason they would have
24 offered the documents.

25 MR. SOBELMAN: We understand that to be the purpose of

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1 the documents your Honor precluded. We didn't have a
2 conversation with them specifically about the purpose for which
3 they were offering the ones to which we didn't object. Because
4 we understood that they had a potential non-hearsay purpose.

5 THE COURT: Well, then let's specify what the
6 non-hearsay purpose is.

7 MR. SOBELMAN: Yes, your Honor. I am not sure if you
8 want to go document by document.

9 THE COURT: Yes, that's what we'll do. Document by
10 document.

11 MR. SOBELMAN: Okay.

12 MR. MERINGOLO: Judge, they had their, they didn't
13 object to it. Now it's in evidence. And I mean, now I can't
14 argue what's in evidence? I can't argue that here is an
15 exhibit, here is the invoice, you decide, ladies and gentlemen
16 what that means. What I say is not evidence. You decide what
17 that e-mail means, you decide what the attachment means. I
18 don't understand.

19 MR. SOBELMAN: We have no objection to that. What I
20 am saying is he can't put up an invoice --

21 MR. MERINGOLO: I'll do it a different way.

22 MR. SOBELMAN: The point is you can't put up an
23 invoice and say Tim Shea billed for X, Y, Z, and, therefore,
24 that happened, without other evidence saying that happened.
25 Which there is no evidence in the record that it did.

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1 THE COURT: I think there is more that he is going to
2 argue. I think he'll probably argue that he billed for X, and
3 that shows that he was undertaking the construction of the
4 wall.

5 (Continued on next page)

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1 MR. SOBELMAN: I'm not sure what he's going to argue.

2 But my point is the invoice is evidence that the
3 invoice was sent; that Tim Shea, for example, sent a bill to We
4 Build the Wall or Brian Kolfage that contained whatever it
5 contained. But we don't think it's proper for him to then say,
6 Because the invoice said that, it must have happened, because
7 this invoice has to be true.

8 THE COURT: So the question is, is he offering it to
9 show that these emails reflect Mr. Shea's work on the project
10 or is he offering it to show that the project was underway or
11 it was completed? I think we need to define that.

12 MR. SOBELMAN: Your Honor, I think Mr. Meringolo can
13 argue inferences from the facts that are admissible. But to
14 rely on the truth of a document to which there's no hearsay
15 exception we think is improper. The nonhearsay purpose of
16 explaining there were other invoices sent, this is what the
17 invoices said. But to then say, you know, because this
18 document says this work was performed means this work was
19 performed, it's that last step that we think is improper as to
20 a couple of the emails.

21 THE COURT: So you have no problem with his stating
22 that there was an invoice for X service or X goods, but you
23 have a problem with him saying that that means that those
24 services or goods were provided?

25 MR. SOBELMAN: Let me confer with counsel for one

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1 second just to make sure I'm being clear.

2 (Counsel conferred)

3 MR. SOBELMAN: Your Honor, we think it's totally
4 proper for defense counsel to say the fact that there's an
5 invoice is circumstantial evidence that the work occurred. But
6 it's a subtle distinction. But I just want to make sure our
7 position is at least clear, and if we get guidance from the
8 Court on this, because we don't want to be objecting in closing
9 if it's something your Honor would not be troubled by.

10 But we do think there is a line that could be crossed
11 between saying, Here's an invoice, you know, this is what
12 was -- this is what was said from person A to person B; and you
13 should infer from that that this work happened, rather than, It
14 says here the work happened and, therefore, the work happened.
15 I think that's the subtle distinction. It's a direct versus
16 circumstantial point. And I think that's sort of the hearsay
17 line to draw.

18 MR. MERINGOLO: Judge, there's nothing in the
19 stipulation preserving a hearsay objection. You know what's
20 really crazy? That work was all done. That's what's really
21 crazy here. I know it has nothing to do with what's going on
22 in this case, but all that work was done; all those invoices
23 were paid.

24 Now we're like, Oh, Meringolo is going to do this.
25 You know what? Meringolo doesn't know what he's going to do

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1 until he does it. I mean, it is -- it may be objectionable, it
2 doesn't come out correctly, I don't read right. It is what it
3 is. Everything is all in the air.

4 But for me to sit here and say I can't argue this
5 email was sent on this day, Tim was working, I mean, the email
6 itself is work. If he's talking to a contractor, getting --
7 somebody's giving him a proposal and he's sending an invoice,
8 that's work. You know, I mean, maybe it's not like digging a
9 ditch or anything else, but it's still work.

10 MR. SOBELMAN: I don't think we disagree with any of
11 that. He can certainly argue these emails were sent, he sent
12 these invoices. It might be that there's no disagreement here
13 at the end of the day. I just wanted to flag the issue because
14 as we were going through them with the jury, there were a few
15 statements that we thought might be interpreted the wrong way.

16 We can move on.

17 THE COURT: I don't want to have surprising
18 objections; I want to resolve this now so that he can prepare
19 his summation.

20 MR. SOBELMAN: If you want, your Honor, we can try
21 talking it out.

22 THE COURT: Would you please do that?

23 We'll take a brief recess.

24 (Recess)

25 THE COURT: Please be seated.

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1 MR. SOBELMAN: Your Honor, we consulted with the
2 defense. I think we have a mutual understanding of, sort of,
3 where the line is. If there's an issue, we'll object; but I
4 don't expect there will be.

5 THE COURT: Would you please let me know what the line
6 is.

7 MR. SOBELMAN: Yes, your Honor.

8 I think the line is between arguing the truth of
9 individual factual assertions in the emails or invoices versus
10 the fact that emails -- that the invoices and emails were sent,
11 are certainly evidence that Tim Shea was doing -- was sending
12 the invoices, that was contacting those people, was involved in
13 those activities. And it's circumstantial evidence that the
14 underlying activities occurred.

15 THE COURT: It's circumstantial evidence that what was
16 discussed in the emails was consummated?

17 MR. SOBELMAN: I think that would be a fair inference
18 for the defense to ask the jury to make, is that if someone is
19 discussing a potential business deal, you could say, Well, they
20 discussed it, and you can infer from that that maybe it
21 happened. I think it's speculative and probably a weak
22 inference, but we're trying to be -- take a wide view of
23 permissible inferences that the defense could ask the jury to
24 draw.

25 THE COURT: Very well.

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1 Anything further?

2 MR. MERINGOLO: No, Judge.

3 THE COURT: All right. Then I look forward to getting
4 your comments on the instructions. Mr. Meringolo, if you have
5 comments, I would also like them to be in today.

6 MR. MERINGOLO: Judge, we were just discussing we may
7 want an idle -- we'll send to you an idle chatter -- possibly
8 an idle chatter instruction standard, because of all the text
9 messages had a lot of idle chatter in it, certain responses on
10 some of the emails that are in evidence. You can rule however,
11 you know, but I just think there was just a lot of idle chatter
12 going back and forth.

13 THE COURT: I just want to resolve this so that at 9
14 a.m. on Tuesday, we can just dive right into summations.

15 MR. MERINGOLO: We'll be ready.

16 MR. ROOS: I'm sorry, I don't know what the idle
17 chatter instruction --

18 MR. MERINGOLO: We'll ask -- we'll send the Court an
19 idle chatter instruction. You can object.

20 MR. ROOS: I don't even know what it is, so I'm not
21 sure --

22 THE COURT: Mr. Roos is asking what is the substance
23 of an idle chatter instruction.

24 MR. MERINGOLO: The substance is that there were text
25 messages going back and forth. And some of those text messages

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1 are just idle chatter, what it says. We'll get the Court the
2 instruction this afternoon. Not in furtherance of the
3 conspiracy. Like if they were talking about -- in these long
4 emails, there were parts of the emails that they weren't
5 talking about We Build the Wall. Talking about, You're going
6 to go to dinner, Tim, which isn't We Build the Wall. That's
7 idle chatter. It's not in furtherance.

8 THE COURT: But what is the instruction that I am to
9 direct them to disregard idle chatter? What is the
10 instruction?

11 MR. MERINGOLO: I'll send it to you, like the
12 government is going to send it to you later, their proposals.

13 THE COURT: All right.

14 MR. ROOS: Sounds to me like he's just asking your
15 Honor to characterize certain evidence as idle chatter and
16 disregard it, which doesn't seem right to me. But we'll put in
17 an opposition to whatever they put in.

18 THE COURT: I have never seen that instruction, and
19 I've been doing this for a long time.

20 MR. MERINGOLO: Maybe we did something that you didn't
21 see. Listen, Judge, some judges put it in, some judges take it
22 out. That's just what we thought of off the top of our head
23 today. If you rule against us, we don't really take -- we
24 accept it and sit down. We don't come back and cry, you know?

25 THE COURT: Good. All righty, then.

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1 So I wish everyone good health and a wonderful holiday
2 weekend.

3 MR. MERINGOLO: Thank you, Judge.

4 (Adjourned to May 31, 2022, at 9 o'clock a.m.)

6 GOVERNMENT EXHIBITS

7 Exhibit No.	Received
8 S1, S3, S5, S6	553
9 452	553
10 S2, 271	554
11 S9	555
12 S10	556
13 S12	557
14 S11	558

15 DEFENDANT EXHIBITS

16 Exhibit No.	Received
17 602, 613, 627, 628, 728, 740, 763, 764, 800 & 564 air subparts	564
18 302	567